REGISTERED No. D. 222.

The Gazette of India

EXTRAORDINARY

PART I—Section 1

PUBLISHED BY AUTHORITY

No. 459B] NEW DELHI, TUESDAY, NOVEMBER 11, 1952

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 11th November 1952

No. 19/21-48/52-Elec.III.—WHEREAS the election of Shri Dandiram Dutta of Chamuapar, P. O. Mangaldoi, District Darrang, Assam, as a member of the Legislative Assembly of Assam from the Kalaigaon constituency of that Assembly has been called in question by two election petitions duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Haji Nasimuddin of Jangalpara, Mouza and P. S. Dalgaon, P.O. Kharupatia, District Darrang, Assam, and Shri Sivaprasad Sarma of Mangaldoi Town, District Darrang, Assam respectively;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provision of sections 86 and 87 of the said Act, for the trial of the said Election petitions, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petitions;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

COURT OF THE ELECTION TRIBUNAL, ASSAM, GAUHATI.

Present:—

Shri A. Das..... *Chairman.*

Shri Umakanta Gohain. } *Members.*
Shri U. N. Bezbaruah }

ELECTION PETITION No. 48 OF 1952.

Kazi Nasimuddin.....*Petitioner.*

Versus

Dandiram Dutta &

five others..... ..*Respondents.*

ELECTION PETITION No. 21 OF 1952.

Sivaprasad Sarma.....*petitioner.*

Versus

Dandiram Dutta &

two others.....*Respondents.*

Shri S. Lahiri, Advocate-General for petitioner in case No. 21.

Shri S. K. Ghose, Advocate for petitioner No. 48 and for respondent No. 2 case No. 21.

JUDGMENT

These two election petitions challenge the election of the returned candidate, Shri Dandiram Dutta, a respondent, to the Assam Legislative Assembly from Kalaigaon (General) Constituency, in the last General Election of 1952. Both the petitions were heard together. The relief claimed in both these cases is that the election of the aforesaid returned candidate be declared void, and this, *inter-alia*, on the ground that the result of the election has been materially affected by the improper rejection of nomination of as many as three candidates by the Returning Officer.

It is maintained on behalf of the petitioners that there was improper rejection of the nomination of the following candidates, namely:—

of (1) Haji Nasimuddin ....Petitioner of case No. 21.

(2) Snehalata Medhi (respondent No. 4 in case No. 21 & the respondent of the same number in case No. 48).

(3) Tankeswar Sarma (respondent No. 5 in both the cases).

There are other grounds taken in the petitions challenging the validity of the election, and there are several issues framed on the pleadings of the parties. It may be noted here that Shri Sivaprasad Sarma, petitioner in case No. 48, not really one of the persons whose nomination is alleged to have been improperly rejected.

We took up, at the out-set, the issue whether the nomination of the above three candidates or, of any one of them, was in fact improperly rejected by the Returning Officer and, if so, has the result of the election been materially affected thereby.

When this issue was taken up for hearing, the learned Advocate for the respondent Shri Dandiram Dutta again applied for adjournment, which was refused, as per our Order No. 20, dated 29.10.52., recorded in case No. 48 of 1952, and thereupon, the respondent withdrew from his defence of the cases, and the learned Advocate for the petitioner in case No. 21 and the one for the petitioner in case No. 48 of 1952 and the respondent No. 2 in the case No. 21, were thereupon called on to argue their cases. It may here be noted that in case No. 21, two written-statements were filed—one by respondent, Shri Dandiram Dutta, challenging the election-petition and the other by respondent No. 2, Shri Sivaprasad Sarma (who is the petitioner in case No. 48), supporting the election petition of the case No. 48. Two written-statements were also filed—one by respondent Shri Dandiram Dutta, challenging the election-petition and the second, by the respondent Shri Haji Nasimuddin (who is the petitioner in case No. 21), supporting the same.

The nomination papers of the aforesaid three candidates whose nominations were rejected by the Returning Officer have been put in evidence, as also the orders of rejection of the Returning Officer in the three cases.

We have gone through the orders of the Returning Officer rejecting nominations of the candidates in the three cases and are clearly of opinion that the view taken by the Returning Officer is erroneous. All these three candidates submitted nomination-papers in the prescribed form, as under Schedule II, and upon each document there runs the following note made by the candidate:—

"Appointment of Election Agents:—

I hereby declare that I have appointed myself as my Election Agent."

Under the endorsement there is the signature of the candidate with the date. Section 40 of the Representation of the People Act, 1951, provides that every person nominated as a candidate at an election shall before the delivery of the nomination-paper under Sub-Section 1 of Section 33 of the Representation of the People Act, 1951, appoint in writing either himself or some other person to be his election agent. Under Sub-section (2) of Section 40 of the Act, when a candidate appoints some person other than himself to be his election-agent he shall obtain in writting the acceptance of such person of the office of such election-agent. In the latter case only form No. 5-A of Schedule 1 to the Representation of People (Conduct of Election and Election Petitions) Rules, 1951, is to be filled in. In case of the present cases this was unnecessary as the candidate appointed himself as his election agent and made a declaration to the same effect in the nomination-paper, referred to above.

This was sufficient compliance with the provisions contained in Sections 40 & 33, Sub-section (3) of the Representation of the People Act, 1951. The observation made by the Returning Officer in his orders of rejection to the effect, that such a declaration and appointment of the candidate as his own election agent, have to be made in a separate document, is absolutely unsustainable. In this view of the case, we hold that the rejection of nomination in each of the above cases was improper. Apart from this, there is nothing before us to indicate that these candidates or any one of them, was not otherwise validly nominated.

Now, about the effect of the above improper rejection of the nomination-papers, it is well-settled that if the nomination of a candidate is improperly rejected, the result of the election is presumed to have been materially affected thereby, in as much as the entire electorate is deprive of its right to vote for a candidate who was qualified to stand as such. Further, this presumption would require the most conclusive evidence for its rebuttal and in the absence of such evidence, the election of the returned candidate must be declared void. The electorate has an absolute right to exercise their franchise to elect in favour of a candidate of their choice and any interference with this right would be absolutely illegal. The whole electorate here having been deprived of their choice to exercise franchise in favour of some candidates who have been duly and validly nominated, was clearly prejudiced and it is difficult to conceive of any circumstance which may indicate that inspite of this improper rejection of the nomination of these three candidates, the electorate was really left unaffected and that the result of the election has not been, in fact, thereby materially affected. Besides, there was no such extraordinary or exceptional circumstances alleged by the respondent in his pleadings, which may afford any scope for a probable displacement of the strong presumption referred to above.

As the result, the election of the returned candidate has to be declared void on the above ground of illegal rejection of nomination of some candidates and both the election petitions must succeed.

On behalf of the petitioner of the Case No. 48 who laid also some charges of illegal and corrupt practices, it was submitted by his learned Advocate that in the event of his client succeeding on the above issue, he would not pursue these charges. It is not, therefore, pursued further.

With regard to the cost of the cases, the respondent No. 1 appeared in both the cases and contested the election-petitions and in the circumstance, he is to be saddled with cost to the petitioner in each case which is assessed, as per Schedule below:—

ORDER

Both the election petitions are granted and it is declared that the election of the returned candidate Shri Dandiram Dutta is void, and he will pay cost to the petitioner of the two cases as per schedule appended hereunder.

Schedule of cost in Case No. 21/1952.

1. Lawyer's Fee	...	Rs. 100	0	0
2. Witnesses' expenses		...		
3. Cost of Court-fees on account of Vakalatnama	...	Rs. 4	0	0
	Total.	Rs. 104	0	0

Schedule of cost in Case No. 48/1952.

1. Lawyer's Fee	...	Rs. 100	0	0
2. Witnesses' expenses	...	Rs. 113	3	0
3. Cost of Court-fees on account of Vakalatnama	...	Rs. 4	0	0
	Total.	Rs. 217	3	0

(Sd.) U. N. BEZBARUAH.
(Sd.) UMAKANTA GOHAIN. } *Members.*

Dated 30th October 1952.

(Sd.) A. DAS, *Chairman,*
Election Tribunal, Assam.

No. 19/33/52-Elec.III.—WHEREAS the election of Shri Sivaraman Nair, Lekshm Vilasom, Keezhcherimel, Vadakkekara, Chengannur, Travancore-Cochin State, as a member of the Legislative Assembly of the Travancore-Cochin State from the Chengannur Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri C. K. Ramachandran Nair, Channathil House Chengannur, Travancore-Cochin State;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said petition, has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, QUILON.

In the matter of the election to the Travancore-Cochin State Legislative Assembly from Chengannur Constituency at the election held on 13th December, 1951.

ELECTION PETITION No. 33 OF 1952.

31st October 1952

Present:

Sri K. Sankaranarayana Iyer, District and Sessions Judge, Quilon.—*Chairman.*

Sri S. Velu Pillai, District and Sessions Judge, Kottayam.
Sri M. S. Narayana Pillai, Advocate, Quilon. } *Members.*

Sri C. K. Ramachandran Nair, B.A., Channathil House, Chengannur.—*Petitioner.*

By Advocate Sri V. N. Narayana Pillai.

Versus

1. Sri Ramachandra Das (Kochukunju) Palamoottil Kolasseri Vadakkathil, Nambarvikala Muri, Pandanayarkulangara Vadakku, Karunagapally.
2. Sri Sivaraman Nair (Parameswaran Pillai) Lekshmi Vilasom, Keezhcherimel, Vadakkekara, Chengannur.
3. Sri Velayudhan Pillai (Parameswaran Pillai) Sree Vilasom Bungalow, Keezhcherimel, Vadakkekara, Chengannur.
4. Sri Kochukunju (Ayappan), Kochieril Veedu, Ngalbhagom Muri, Kaviyoor Pakuthy, Thiruvalla Taluk.
5. Sri Kesava Pillai (Padmanabha Pillai) Lekshmi Vilasom, Pully Chengannur.
6. Shri Raghava Karnavar (Krishna Karnavar) Advocate, Gopivilason, Angadical, Chengannur.
7. Sri Atma Gopalan (Sankaran) Valiyathu Thekkepura, Kedakad, Thonnallur Pakuthy, Mavelikara Taluk.
8. Sri Dass, P. K. (Kunjol) Mulamuttathu Veedu, Edayaranmula Muri, Aranmula Pakuthy, Thiruvalla Taluk.
9. Sri Kutti (Thevan) Parapurathu Veedu, Pennukkara Thekku, Ala, Chengannur.
10. Srimati Rajamma (Narandran) Kallekkal Peedikayil Puthen Veedu, Angadical Thekku, Vadakkekara, Chengannur.
11. Sri Chandrasanan (Krishnan) Panavillakezhakkathil, Mezhuvely, Pandalam Vadakkekara, Thiruvalla Taluk.
12. Sri Alexander (Kurian) Mithrapuram Bungalow, Karuvatta, Pallekkal, Mavelikara.
13. Sri Thomas (Thomas) Kollarayam Peedika, Peralasseri, Chengannur.

14. Sri N. S. Purushothaman, T.C. No. 933A, University Ward, Trivandrum.

15. Sri K. R. Saraswathi Amma, (N. Krishnan Thampi) Sree Vijayapuram, Angadical, Vadakkekara, Chengannur.—*Respondents.*

1*st Respondent.*—By Advocate Sri T. V. Thomas.

2*nd Respondent.*—By Advocates:—

Sri T. R. Balakrishna Iyer, and

Sri D. Sankara Iyer.

The petition matter having been finally heard on 24th October, 1952 the Tribunal on 31st October, 1952 announced the following:—

ORDER

The petitioner is a defeated candidate who had contested the general seat in the Chengannur Constituency of the Travancore-Cochin Legislative Assembly at the general election held on 13th December 1951. The 1st respondent is the successful candidate in respect of the reserved seat and the 2nd respondent is the successful candidate for the general seat. This petition has been presented chiefly on the ground that the result of the election has been materially affected by the improper rejection of the nomination papers of respondents 11 to 14 and the improper acceptance of the nomination papers of respondents 2 and 3 by Returning officer at the scrutiny made on 30th of October 1951. Respondents 1 and 2 appeared by counsel to contest the petition while the 4th respondent contented himself with filing a written statement supporting the petitioner. The others have not appeared pursuant to the notices issued to them.

2. At the first sitting of the Tribunal the material averments of the parties were recorded in the presence of their counsel, and 14 issues were raised. Of these, issue No. 10 was struck off later on the application of the petitioner, and the remaining issues were renumbered. They are the following:—

1. Is the petition maintainable?
2. Are the respondents 11 to 14 necessary or proper parties to the Election Petition?
3. Is the petition bad for misjoinder of parties?
4. Were the nomination papers of respondents 11 to 14 improperly rejected, and of respondents 2 and 3 improperly accepted by the Returning officer? If so, was the result of the election materially affected thereby? Is the election liable to be declared wholly void on that ground?
5. Were the petitioner and the 4th respondent assigned the same symbol (elephant) and was it modified later in the case of the 4th respondent by the addition of a ring around the elephant? Were the symbols as finally assigned to the petitioner and 4th respondent sufficiently distinctive?
6. Was the list of valid nominations prepared and published in the prescribed manner? Was the above list as prepared and published in substantial compliance with the requirements?
7. Was there any confusion in the arrangement of ballot boxes in the booths?
8. Was there any irregularity in the counting of votes, in the ballot boxes and the postal votes?
9. Was the scrutiny of nomination papers conducted improperly and against rules?
10. Was the result of the election materially affected by all or any of the irregularities alleged by the petitioner in reasons 1 to 7 mentioned in the petition?
11. Is the election of the 2nd respondent void for any reason?
12. Is the petitioner precluded from challenging the validity of 2nd respondent's election by reason of his failure to pray specifically for setting aside the 1st respondent's election?
13. What is the order as to costs?

3. *Issues 1 and 12.*—Issue 1 pointedly raises the preliminary question touching the maintainability of the petition. When the pleadings were recorded, counsel for the 2nd respondent clarified, that this objection in the written statement was based on Sections 82 and 83 of the Representation of the People Act 1951 (No. XLIII of 1951) here-in-after referred to as the Act. Section 90 (4) of the Act, empowers the Tribunal to dismiss in limine an election petition, which does not comply with the provisions of Section 81, Section 83 or Section 117. It does not authorise the dismissal of a petition for non-compliance with Section 82, which but prescribes who may be joined as respondents to an election petition. The objection under Section 83 is, that the petition is not accompanied by a list of corrupt or illegal practices. It assumes, that reason No. 7 formulated in the petition relating to the manner in which certain double votes were exercised in the constituency, constitutes an allegation of corrupt or illegal practice. No other particular alleged in the petition, has even a semblance to any corrupt or illegal practice. These practices are defined in Sections 123 to 125 of the Act. The alleged irregularity in the voting, if any, does not constitute a corrupt or illegal practice within the definition. Indeed, the learned counsel for the petitioner disclaimed that he had a case at all that any corrupt or illegal practice has been alleged, or is relied on by him, as vitiating the election. At his instance, issue No. 10 as originally framed covering reason No. 7 was struck off. Counsel Mr. T. R. Balakrishna Iyer, frankly stated at the hearing, that he did not propose to canvass the issue of maintainability on these grounds, but indicated, that he pressed the point, on quite a different ground. We will advert to this at once.

4. According to counsel, the relief claimed in the petition is but a declaration that the election of one of the returned candidates, *viz.* the 2nd respondent, is void. His contention is that the ground of improper rejection and acceptance of nomination papers—the chief ground relied on by the petitioner at the final hearing—cannot be entertained for granting this relief, by virtue of the provisions of Section 100 and Section 101 of the Act. He maintained, that the scheme of the Act is, to classify election petitions under three categories according to the reliefs which are open to a petitioner under Section 84 (which can be granted or refused by the Tribunal under Section 98 of the Act), and also to classify the grounds on which election petitions can be based (detailed in sub-sections 1 and 2 of Section 100 and Section 101), and to relate the grounds to the reliefs. The grounds as well as the reliefs were contended to be mutually exclusive. In other words, the argument is, that the relief under Section 84(a) is related to the grounds in sub-section 2 of Section 100, the relief under Section 84(c) to the grounds in sub-section 1 of Section 100, and the relief under Section 84(b) to the grounds in Section 101 and the relief under Section 84 (a) which alone according to the 2nd respondent has been claimed by the petitioner, can be granted only, if the grounds under sub-section 2 of Section 100 have been made out. The ground of improper rejection and acceptance of nomination papers, being a ground enumerated in sub-section 1 of Section 100, cannot therefore be availed of by the petitioner while seeking the relief under Section 84(a). Before proceeding to examine this contention on the merits, it is first necessary to dispose of the preliminary objection of the petitioner that no such case has been set up in the pleadings and therefore the contention cannot be entertained.

5. The only plea of the 2nd respondent in his written statement on which the contention is based, occurs in paragraph 11 thereof, that the petition as framed praying that the 2nd respondent's election be declared void, is not maintainable on the averments made. The argument now appears to be the converse of plea, that the relief being such as it is, the ground now relied on, cannot support that relief, though another relief could well have been claimed. Issue 12 as settled, does not also cover this contention, raising as it does, the only point, whether the petitioner is precluded from seeking relief, even against the 2nd respondent, by reason of his failure to question the election of the 1st respondent as well. There is thus great force in the objection, that the point now raised has not been specifically taken by the 2nd respondent previously. But his learned counsel submitted that it was a question of law affecting the nature of the relief that might be granted and as such prayed that it may be allowed to be argued.

6. The trial of an election petition is largely governed by the provisions of the Civil Procedure Code, so far as they are applicable. Even so, under Order VIII Rule 2 of the Indian Civil Procedure Code, we are not clear, that the plea can be allowed to be raised. However, we permitted the learned counsel to advance his arguments subject to the preliminary objection taken for the petitioner and in justice to the arguments addressed it is necessary they are carefully examined.

7. The argument takes for granted, that the relief claimed is only to declare the election of the 2nd respondent void. This is to ignore a very material paragraph of the petition, and to confine the attention only to the concluding paragraph. While we agree, that generally, a petition must indicate the relief sought, there is no rule or law, prescribing the order or sequence in which the relief ought to be set forth. The petition now before us, after referring to the election held in the Chengannur Constituency on the day in question when respondents 1 and 2 were elected, proceeds to state as follows: "The above election has to be declared illegal and void, for the following reasons, under Sections 1 and 2 of Section 100, and Section 101 of the Representation of the People Act (XLIII of 1951)". The reasons are then detailed. The phrase "has to be declared illegal and void for the following reasons" cannot, in our view be construed as constituting only a mere declaration or enuciation of his right by the petitioner. So to interpret it would be to place a restriction on the language for which we see no warrant. If the concluding paragraph of the petition which was relied on as containing the only prayer in the petition, had been absent, it is clear that the 2nd respondent could not have successfully contended that the petition would fail for want of a prayer. We are of opinion, that the intermediate paragraph referred to above, has all the elements of a valid prayer for a declaration that the election is wholly void a relief falling under Section 84 (c). We are also unable to find anything in the last paragraph, which is restrictive of the earlier one, or suggestive of an inference that the claim made in the earlier one has been abandoned. In our opinion, the reasonable construction of the petition is, that it puts up, not one prayer only, but two—one under Section 84 (c) and another under Section 84 (a).

8. Section 84 prescribes that a petitioner may claim any one of the three stated reliefs. This does not prevent him from claiming reliefs alternatively, so long as he does not seek more than one relief at a time. The prohibition is against asking for reliefs cumulatively. There is however, nothing in the petition itself to suggest, that the two reliefs mentioned in it, have been asked for cumulatively. The only objection to which it is open is, that the preference, in case the reliefs are to be claimed alternatively, has not been indicated. A contravention of Section 84 of the Act, by asking for more reliefs than one at a time, cannot entail a dismissal of the petition, which can only happen under Section 90 (4) of the Act, for other infractions of the law specified in that section. It is therefore but an irregularity that the petition did not indicate the preference for one of the two reliefs mentioned there. This however is a choice which the petitioner can exercise at any time and which we are clear he exercised unambiguously when he entered the rejoinder at the time of recording the pleadings, that the improper acceptance or rejection of nomination papers having materially affected the result the election is wholly void. From that moment even the irregularity that had attached, itself to the petition by reason of the failure to indicate the preference for one or other of the two reliefs was removed and the petition has now to be deemed to be one exclusively for a declaration that the election is wholly void. This construction of the petition, which tends to harmonise the two different parts of the petition and to give each part is full meaning and implication is, we think, more justified, than one which either excludes one of them, or reads it as subservient to the other, without any warrant to do so.

9. In this view, there is no scope for the further arguments advanced under this head by the learned counsel for the 2nd respondent. However, we propose to consider them. The objection is not so much, to the maintainability of the petition, as to the granting of a particular relief based on a ground, which does not pertain to it. It is not quite easy to decide, whether sub-sections 1 and 2 of Section 100 and Section 101 are mutually exclusive, as contended. This would depend on a nice balancing of considerations. We shall advert to a few of these only, as in our opinion, the decision, on this point, can be more properly rested on a different ground. If the grounds in sub-sections 1 and 2 of Section 100 and in Section 101 are treated as over-lapping and not mutually exclusive, the consequence would be, that for such grounds as do overlap, any one of the appropriate reliefs could be granted; but it is doubtful if this result was intended. On the contrary, the expression in the above provisions, that the Tribunal 'shall' grant a particular relief, on certain grounds being found to exist, is *prima facie* indicative, that, that relief and no other, could be granted on such grounds. We are not convinced, that the classification of election petitions in rule 119 under two categories, those which call in question the election of one candidate only, and those which call in question the election as a whole where there are more returned candidates than one, for the purpose of fixing two different periods of limitation, is of any assistance in deciding this question. That classification into two, does not in terms correspond to the classification into the three categories, according to the reliefs

sought. There is also no good reason to extend this classification in Rule 119 into the scheme of the Act itself, in the absence of a compelling reason. The rules of limitation are but arbitrary in a sense, and can hardly be relied on, to found an argument on the theory of exclusiveness.

10. The opposing view is, that any of the grounds under one category, can be availed of in support of a relief belonging to another category. One weighty reason in its favour is, that if the rule were otherwise, a ground for a major relief, as under sub-section (1) of Section 100, would be ineffective to grant a minor relief, if it may be so called, under sub-section (2) of Section 100 of the Act, a consequence, which cannot be so readily accepted. The absence of any express provision, indicative of exclusiveness, was also relied on. As part of his argument, the petitioner's learned counsel urged, that the ground of improper rejection and acceptance of a nomination paper specifically treated under Section 100 (1) (c), may also be deemed to fall within the scope of the ground in Section 100 (2) (c), which is couched in such general terms as to embrace any non-compliance with any provision of the Act. It is however, difficult to accept this contention, and on the same parity of reasoning, it must follow, that the grounds in clauses (a) and (b) of sub-section 1 of Section 100 are also covered respectively, by clauses (a) and (b) of sub-section 2 of Section 100. If this reasoning is to prevail, it would lead to the anomaly already indicated, that two reliefs can always follow from the grounds in sub-section 1 of Section 100. It fails to take into account, the mandate to the Tribunal, that on the grounds in Section 100 (1), a st- l relief shall follow, which necessarily excludes all others. The better view se__s to be, that the grounds in clauses (a), (b) and (c) of Section 100 (1) and at any rate, the particular ground in clause (c), have been dissociated from their genus, for separate treatment under Section 100 (1) leaving the residue alone, to be dealt with under sub-section 2, and Section 101. However, for the decision of the present controversy, it does not appear to us to be necessary, to pronounce finally upon this point, as in our opinion, the relief, that the petitioner can be granted even assuming that he had asked for avoiding the election of the 2nd respondent alone, is that under sub-section 1 of Section 100, if the requisite grounds are made out. This will now be explained.

11. It is necessary to observe, that an election petition and its trial, are not on all fours with a plaint in a civil suit and its trial. In the latter, the proceeding is between party and party whereas in the former, in the words employed by Mr. T. R. Balakrishna Iyer, counsel for the 2nd respondent, the whole constituency is, in a sense, involved in the trial. An election petition cannot ordinarily be dismissed for default, or brought to an end at the will of the parties, or by the death of any of them, without giving an opportunity to the others. Who might have been petitioners. See *Ludhiana* and *Ferozepore* General Constituency Case 1946, Sen and Poddar, Indian Election Cases, 491, at 496 and 497. Elaborate provisions have been devised in the Act, in the event of abatement of election petitions, and for the disposal of applications for their withdrawal. They have been enacted, to quote the words of Andrew J., in the *North Meath* case, 4 O'M & H. 185 at 187 to "render it impossible for the court, to sanction any concession which may have the effect of excluding that full disclosure of facts, which it was one of the objects of the statute to provide for, or of preventing that thorough investigation, which the court is bound to make, of all the charges relied on by the petitioner."

12. With this back-ground, the provisions of the Act, which bear on this question may be examined. Section 81 predicates of election petitions *presented on* one or more of *specified grounds*, and not *for* specified *reliefs*. Section 83 prescribes the contents of the petition and significantly, does not refer to the relief claimed, as part of it. Sections 100 and 101 classify the grounds which may be found to exist by the Tribunal, according to their gravity and importance, and enact, that on specified grounds being made out, a specified result shall ensue. The classification of the grounds, and the prescription of the reliefs that the Tribunal is bound to grant under Sections 100 and 101, have not been made to depend on the nature of the relief claimed. Sections 84 and 98 enumerate only the admissible reliefs which a petitioner can claim, and which the Tribunal can grant. Section 84 is a catalogue from which the petitioner must make his choice, but the relief that can be granted, is conditioned only by the grounds alleged and proved to e) The reliefs are not a part of the pleadings unlike in a civil case, in which, suitor seeking reliefs individually against his opponent, is the most competent person to decide what he wants and does not want. It ought not to be open to a petitioner in an election petition to conclude his constituency or to tie the hands of the Tribunal, by moulding his prayer in a manner as may best conduce to his

private ends, whatever be the grounds on which he bases his claim. The above we think, is the true intendment of the language employed in Sections 100 and 101 of the Act. In this view, granting a minor relief when a major one is asked for, or refusing to grant a major relief when only a minor one is sought, a principle which commonly arises in the disposal of civil suits, has no analogy with the award of reliefs in an election petition, which is governed solely by the statute of which it is a creature.

13. We therefore come to the conclusion, that, whether sub-sections 1 and 2 of Section 100 and Section 101 are mutually exclusive or not, and whatever be the scope of the prayer made, or the relief claimed in the election petition, the relief which the Tribunal can and is bound to grant, must depend on the grounds which it finds to exist. If no ground is made out, the petition must be dismissed under clause (a) of Section 98; otherwise, the relief appropriate to the ground alleged and proved must be granted. On issue 1, there is no reason to think, that the petition is not maintainable, for any reason. Issue 12, which was settled in the presence of counsel appearing on either side, was not dealt with in the form in which it occurs, by counsel for the respondents. It does not appear to us, how the petitioner is precluded, from impeaching the 2nd respondent's election, merely on account of his failure, if it were so, to pray specified for setting aside the election of the 1st respondent. This variance between the issue and the arguments, is due to the absence of a definite plea in the written statement, raising the present contention in a pointed form. However, no argument was advanced to sustain the contention covered by issue 12, which is accordingly found in favour of the petitioner.

14. *Issue 4.*—This raises the question of the improper rejection of the nomination papers of respondents 11 to 14 and the improper acceptance of those respondents 2 and 3 and their effect on the result of the election. The 11th respondent delivered two nomination paper Exts. E and E1 to the Returning officer, the 12th respondent delivered three Exts. D, D1 and D2, the 13th respondent delivered two Exts. C and C1, and the 14th respondent delivered four Exts. B, B1, B2 and B3. These were rejected by the Returning officer on the same ground, that the election agent of each candidate, though the candidate himself, was not described by name but only by the word "myself", meaning the candidate. This was held, not to be a sufficient compliance with the instruction printed as a foot-note on each nomination paper. The foot-note reads as follows: "Only one election agent is to be appointed by a candidate. If more than one nomination paper is delivered by or on behalf of a candidate for election in the same constituency, the name of the election agent so appointed whether such agent is the candidate himself or any other person shall be specified in each such nomination paper." The orders rejecting the nomination papers of these respondents are respectively Exts. E2, D3, C2 and B4.

15. The Act provides by Section 40, that every candidate at an election, shall appoint either himself or some one other person as his election agent. A declaration of such appointment ought to accompany every nomination paper delivered to the Returning Officer. This is provided in Section 33 (3). In the absence of such declaration the candidate cannot be deemed to be duly nominated. The form of the nomination paper in schedule II of the Act prescribed pursuant to Rule 4, itself contains the declaration of appointment of the election agent. Section 33 (3) provides that in case any person other than the candidate is appointed as the election agent, his name shall be entered in the declaration. The form of the nomination paper accordingly makes provision for entering the name of the election agent if he is any other person and for employing the word "myself" in case the agent is the candidate himself. The first part of the foot-note provides that only one election agent can be appointed by a candidate. This is in exact conformity with Section 33 (3) and Section 40 of the Act. The foot-note then proceeds to say that the name of the agent whether the candidate himself or any other, shall be specified on each nomination paper if more nomination papers than one are delivered by him or on his behalf. A literal interpretation of the foot-note may imply, that in the event of more than one nomination paper being delivered the name of the election agent whoever he be, ought to be specified in each such nomination paper. The question to determine is whether this literal interpretation ought to prevail. It is therefore useful to examine the *object underlying the foot-note.* This is only to emphasise to the candidates, what is already in the statute that not more than one election agent can be appointed, even if more nomination papers than one are delivered, and also to devise a means for checking or verifying this by insisting that—each paper must refer to the election agent whether he is the candidate himself or not. In Chapter II of the "Handbook for Candidates for Election to the House of the

People, the Legislative Assemblies and the Electoral Colleges" complied by the Election Commission, India, and published by the Government Central Press, Trivandrum in 1951, the following note appears under paragraph 9. "The name of the *same* person (whether it is yourself or another person appointed by you to be your election agent) should be mentioned as your election agent in each of the nomination papers that you file in the same constituency. In other words, you cannot have different election agents in the different nomination papers filed by you. Violation of this rule may result in the rejection of *all* your nomination papers". It is a fair presumption to make, that the object of the foot-note was not to insist upon a condition which does not find a place even in the form itself. There being no other form of nomination paper prescribed to meet cases where more than one nomination paper is delivered, the inference is, that the same forms were intended to be used. If so, the printed word "myself" occuring in all such papers and the blank spaces above the line for filling the name of the agent, make clear the object intended to be served by the foot-note. If on the other hand, the name of the agent is to be inserted in both cases, the word "myself" below the line, would be entirely superfluous; the words "son of .....of ....." above, would have been sufficient. The absence of dotted lines, after the word "myself", or before it, is at least a *prima-facie* indication, though not conclusive that the word "myself" is sufficient, when the candidate himself is the election agent. In our opinion, the true meaning of the relevant part of the foot-note is, that each nomination paper must bear an indication, as to who is the election agent, in all cases. This interpretation which if we may say so, is the more liberal one, conforms to the true object with which the foot-note was inserted. If so, respondents 11 to 14, having described the election agent on each nomination paper, as "myself", have not failed to comply with the foot-note. The argument that if this was the true object underlying the foot-note, it could have stopped very well with the first sentence in it that only one election agent is to be appointed by a candidate, fails to take into account the means of verification, which was also intended to be devised, by the later sentences in the foot-note.

16. It remains to consider how far the rejection of the nomination papers by the Returning officer can be deemed to be proper. If the true intendment of the rule, is, as we have indicated, there is sufficient compliance with it and the rejection is totally improper. If however, a literal interpretation of the foot-note is to be insisted upon, we are equally clear that the rejection of the nomination papers cannot be supported for more reasons than one. If the true meaning of the rule is that the name (meaning the proper noun) of the election agent, should find a place in both cases on each of the nomination papers, we are disposed to think, that this would be going beyond the terms of Section 33 (3) of the Act, which, insists on the name being mentioned only in the case of the appointment of any person other than the candidate himself as the election agent. As for the candidate constituting himself his own election agent, there is no such prescription in Section 33 (3), and this sub-section applies to every nomination paper. The foot-note, however, would then, according to the literal interpretation as a part of the form precribed by the rules framed under the Act, go beyond the scope of the section and be *ultra vires*.

17. The power of the Returning officer to reject nomination papers is conferred on him, and is circumscribed by the provisions of sub-section 2 of Section 36. Section 36 (4) prohibits the rejection of a nomination paper on the ground of any technical defect, which is not of a substantial character. Counsel for the 2nd respondent contended, that such technical defects are only those which have been mentioned in sub-section 5 of Section 33, which enables the Returning officer to permit the correction of any clerical or printing error or to regard them as trivial. We feel unable to accept the argument that technical defects contemplated by sub-section 4 of Section 36 are identical with clerical or printing mistakes. Nor is there any warrant to limit the interpretation of the phrase "technical defects not of a substantial character" *ejusdem generis*, with such errors or mistakes.

18. It is not easy to define, what are "technical defects not of a substantial character". The decided cases afford many instances in which several defects have been held not to vitiate nomination papers. Where however a question of identity of the candidate or the proposer or the seconder or the agent is involved, which cannot be resolved even on a summary enquiry contemplated by sub-section 2 of Section 36, the view has no doubt been taken, that the defect was one of substance as to render the nomination liable to be rejected. But the cases have also laid down that meticulous accuracy is not to be insisted upon in the filling up of a nomination paper. The misdescription of the constituency in the nomination paper was held not to vitiate it, in the *South-Western Tow*

Where no reasonable doubt
reference to his number
in South-East Punjab
to comply with a
the sub-division
to the form
and a
Sikh

panel of candid... that the ... sumption ... in his ...

... the almost impossible task ... has not been materially affe... successful candidate, is in no way ... difficult task, which a defeated can... result in establishing in cases where th... election has been ... Confront ...

... the considerations placed before us in supp... It is however impossible to deny the existe... case of no opportunity whatever for the electo... who was not allowed to stand, and of a differe... one who had once faced the electorate. Apparently ... the basis of the different rules of evidence evolved ... cases. After all, law is not always logical, and ... chosen to raise a presumption in case of impro... paper. We are satisfied, that there is no good ... view.

22. The learned counsel for the 2nd respon... decided cases, which according to him, in a ... Patna West N. M. R. 1927 Hammond's E... closed the poll owing to some confusion ... 44 of Bihar and Orissa Electoral Ru... if the result ... the election has ... non-complia... with the provis... Act. This ... a case ... view ... the ...

received more than 100 votes. Ext. A.B. (form of return of election for Chengannur constituency) shows the 10th respondent polled 4321 votes. The evidence of these witnesses is thus hardly sufficient to rebut the presumption. On the other hand it has been made clear that following the rejection of the nomination papers of respondents 11 to 14 the 2nd respondent solicited and obtained the support of the Indian Socialist Party of which the 12th respondent was a prominent member. It was pointed out that the Indian Socialist Party had no hold at all in the State, that the election results showed that hardly a dozen of the eighty and odd candidates they had put up, succeeded at the polls, and that quite a number of them lost their deposits. We do not think the over all position in the State is any sure index in assessing the support the party commanded in a particular constituency. If the party had no footing at all at Chengannur as 2nd respondent's witnesses 1, 2, 3, 4, 5 & 10 would say, we fail to understand how it happened that the 2nd respondent hastened to Trivandrum to interview their Chairman (P.W. 3) and solicit his help and the help of his party in his election campaign. P.W. 3 who, incidently, was the Prime Minister in the first popular ministry that was formed in the State, has spoken to this. The 2nd respondent tried to explain away the visit as having been made "to appease" some young men who, he said, were victims of Congress propaganda and feared being implicated in a criminal case registered by the local police but Ext. AO letter proved by P.W. 3 (and which the 2nd respondent has admitted) leaves no doubt in our minds as to the real objective. The letter reads as follows:—

CHENGANNUR,
28th November, 1951.

M. SIVARAMAN NAIR, B.A., M.B.B.S.
Chengannur.

To

SRI PATTOM THANU PILLAI,
CHAIRMAN, SOCIALIST PARTY T. C. STATE,
TRIVANDRUM.

SIR,

I write to request you to lend your all out support in my favour in Chengannur Constituency. I shall join the Socialist Party when the elections are over. Kindly issue the necessary instructions to the party members to support me.

Yours faithfully,

(Sd.)

P.W. 3 swears that following this letter he proceeded to Chengannur and toured the constituency exhorting the electorate to vote for the 2nd respondent in the absence of a regular Socialist candidate, and that in two of the meetings held, the 2nd respondent was also present. The 2nd respondent denied all this, saying that he had no help whatever from the Socialist party. We do not see how we can accept his statements any more than those proceeding from his witnesses on the matter, in the light of the facts proved before us. We are satisfied that the evidence adduced by the 2nd respondent is wholly insufficient to rebut the presumption arising in the case, and the finding is thus inescapable that the rejection of the nomination papers of respondents 11 to 14, has materially affected the result of the election.

24. *Issue 2.*—In view of the finding that the nomination papers of the respondents 11 to 14 were improperly rejected, we hold these respondents are proper and necessary parties to this petition.

25. *Issue 3.*—It follows that the petition is not bad for misjoinder as stated.

26. *Issues 5 to 9.*—These issues were not pressed by counsel for the petitioner, and accordingly they do not arise for consideration.

27. *Issue 10.*—This issue deals with the irregularities which are the subject matter of issues 4 to 9. Issue 5 to 9 are not pressed, and issue 4 has already been discussed and disposed of. So no separate finding in that regard is now called for.

28. Issue 11. It was argued for the petitioner that the election of the 2nd respondent is void because there was no appointment by him of an election agent at all at the time his nomination paper was filed and therefore the declaration in Ext F that an election agent had been appointed was false. This contention has not been specifically taken by the—petitioner in this Election Petition, the sole case then put forward being that the nomination paper was defective for the reason it was not accompanied by the V(a) form of appointment. We do not therefore see how we can allow the petitioner to—raise the plea at this stage. Even on the merits the contention has no substance. The form of appointment has been placed before us and it has been proved by respondent's 6th witness and the Returning officer as Ext I. We have no doubt it is a genuine document. Accordingly we find, the petitioner is not entitled to impugn the election of the 2nd respondent on this ground, although for other reasons already explained, we have held that the election cannot be maintained.

29 *Issue 13.*—It has been established in the case that the rejection of the nomination papers of respondents 11 to 14 was an act done by the Reeurning officer *suo motu*. In the circumstances, the appropriate order will be to direct the parties to bear their costs.

The result is, we declare the election wholly void. The Petitioner as well as the contesting respondents shall each suffer his costs.

Before closing, it is proper that we acknowledge our indebtedness to learned counsel appearing on both sides for the assistance they have given us in the trial of this Election Petition.

Announced by the Tribunal in open court this day the 31st of October 1952.

(Sd.) K. SANKARANARAYANA IYER,
Chairman.

(Sd.) S. VELU PILLAI,
Member.

(Sd.) M. S. NARAYANA PILLAI,
Member.

APPENDIX

EXHIBITS FOR THE PETITIONER

Exhibit A. Nomination paper of petitioner.

B., B1, B2, B3 } Nomination papers of Respondent 14.

B4 Order in B3.

C., C1 } Nomination papers of Respondent 13.

D., D1, D2 } Nomination papers of Respondent 12.

D3 Order in Exhibit D rejecting the nomination.

E., E1 } Nomination papers of Respondent 11.

E2 Order (on Exhibit E1) rejecting the nomination.

F. Nomination paper of Respondent 2.

G. Nomination paper of Respondent 3.

H. Nomination paper of Respondent 4.

J Nomination paper of Respondent 5.

K. Nomination paper of Respondent 6.

L. Nomination paper of Respondent 7.

M. Nomination paper of Respondent 8.

N. Nomination paper of Respondent 9.

O. Nomination paper of Respondent 10.

P. Nomination paper of Respondent 15.

Q. Nomination paper of Respondent 1.

R. Endorsement by the Returning Officer to the petitioner on his application for copies of Form V (a) by respondents 2 and 3.

S. Reply of the Returning Officer to the Tribunal to the requisition for forwarding Form No. V (a) submitted by the candidates.

T. Copy of Government Gazette in which the list of valid nominations was published.

U. Copy of Kerala Bhushanam dated 10-11-1951 in which the list of valid nomination was published.

W. Copy of the Government Gazette dated 23rd October 1951 in which the symbols for use at the election and the assignment of symbols to All India Political Parties were published.

Y. Sheet of the *Gazette of India* dated 23rd October 1951 in which the addition of one more symbol to those under Ext. W was published.

Z. Copy of application dated 24-10-1951 by the petitioner for assignment of symbol to him and copy of order thereon.

AA. Copy of the Hindu dated 1-1-1952 in which the result of polling in the Chengannoor Constituency was published.

AB. Return of election showing votes secured by each candidate.

AC. Application by petitioner to the Returning officer requesting him to open for counting one ballot box at a time.

AD. Specimen copy of the symbol assigned to the petitioner.

AE. Specimen copy of the symbol assigned to the 4th respdt.

AF. Hand-bill printed by the petitioner.

AG. Copy of a bit notice alleged to be published by the Socialist party supporting the candidature of the 2nd respondent.

AH. Copy of wall-poster published by the petitioner.

AJ. Hand-bill published by the petitioner.

AK. Form of account of ballot papers of 2nd respondent.

AL. Form of account of ballot papers of 3rd respondent.

AM. Form of account of ballot papers of petitioner.

AN. Gazette dated 6-11-1951.

AO. 28-11-1951. Letter from 2nd respondent to Sri Pattom Thanu Pillai.

EXHIBITS FOR THE 2ND RESPONDENT

I. Form No. V(a) filed by the 2nd respondent.

II. Symbol of bullock with yoke within a ring.

III. Symbol of bullock with yoke.

IV. Symbol of elephant.

V. Symbol of elephant within a ring.

VI. Extract of statement showing number of vote polled by each party in the House of People in the General Election.

WITNESSES FOR THE PETITIONER

1. C. K. Ramachandran Nair. (Petitioner).

2. T. P. Velayudhan Pillai. (3rd respondent).

3. A. Thanu Pillai.

WITNESSES FOR THE 2ND RESPONDENT

1. N. Kesava Pillai.
2. V. K. Nanu.
3. K. V. Chacko.
4. K. K. Chacko.
5. T. T. Kuruvilla.
6. Chandrasekhara Pillai.
7. P. Narayana Pillai.
8. N. Raman Namboothiripad. (Returning Officer).
9. N. Raghavan Pillai. (Electrical Officer).
10. K. Chacko.
11. Sivaraman Nair. (2nd respondent).

(Sd.) Illegible,
Chairman, Election Tribunal.

P. S. SUBRAMANIAN,
Officer on Specal Duty

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1952